REMARKS

Claims 1-6, 17-26, and 44 are now pending in the present application. Claims 7-16 and 27-43 are canceled. Additionally, Claims 1, 17, and 44 have been amended, per Examiner's suggestion. No new claims have been added. Because the amendments are directed towards curing §112 rejections, no issues are being raised. Thus, the present amendments should be entered for the purpose of reducing the issues for appeal in particular by placing the claims in condition for allowance.

Applicant has carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. Applicant respectfully requests reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

Claim Rejections - 35 USC §112

Applicants thank the Examiner for suggestions to overcome the section 112 rejections. Claims 1, 17, and 44 have been amended as suggested. Applicants believe the rejection to be moot in light of amendments. Consequently, Applicants respectfully request the Examiner withdraw the rejections.

Claim Rejections - 35 USC §103(a)

Examiner states on page 3 and 4 in this Office Aetion as follows:

> Claims 1,5 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis et al (4,806,377) as set forth on pages 5-6 of the January 26,2005 Office action and in paragraph no. 5, Paper No.1 01906.
>
> Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Salmon Patties" in view of Ellis et al as applied to claims 1, 5 and 44 above,

and further in view of "A Dinner Experiment" and "Dried Food Products" as set forth on page 6 of said Office action.

Claims 17-22, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Food Product Design" in view of "Salmon Patties" and Ellis et al as set forth on pages 7-8 of said Office action and in the last sentence of paragraph no. 5, Paper No.1 01906.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al in view of "Salmon Patties" as set forth on pages 2-3 of the September 23, 2005 Office action.

The present application is directed towards imparting a toasted corn flavor to a food product. For example, DORITOS brand corn chips are examples of corn chips that are toasted and then fried. DORITOS brand corn chips can have toast marks made from locations where the dough pre-forms touch areas of a hot mesh conveyor during a toasting step. However, it may be desirable to provide stackable tortilla chips for sale in a canister. It is difficult to make stackable, toasted tortilla chips in a single mold form fryer. This is because the chips cannot be toasted before they are routed to the form fryer because dough pre-forms lose elasticity during toasting and elasticity is required for the dough pre-form to engage, mate with, and take the shape of a mold on the top conveyor of the single mold form fryer. (An example of a single mold form fryer can be found in U.S. Pat. No. 6,875,458 assigned to the same assignee as the present invention.) In addition to imparting stiffness in the dough pre-form, the toaster oven also potentially causes chip curl. A curled chip, because of its varying thickness, would also be unable to engage, mate with, and take the shape of the mold. Thus, the inventors of the present invention came up with the idea of making a toasted corn flavor additive that can be, for example, added to dough pre-forms that are then fried in a single mold form fryer. With that background, Applicants now explain why the present invention is unobvious in view of the cited references.

All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). The present invention has the required limitation of a regrind, "such that if said regrind was mixed with a sample of untoasted dry masa chips, said regrind would enable the resulting mixture to exhibit a dimethyl-ethyl-pyrazine concentration of about 0.05 ppm." As taught in paragraph 71 of the instant published patent application (2005/0079269), "Research has shown that various aromatic compounds such as methional, various pyrzaines and pyrrolines, are associated with toasted corn flavor in foods . . . . Dimethyl-ethyl-pyrazine is one such aromatic compound . . . ." Applicants point out that even if chips made from the Ellis reference (U.S. Pat. No. 4,806,377) or FRITOS from the Salmon Patties reference were ground into a regrind, the resultant regrind would merely exhibit the toasted flavor of a standard toasted chip. Thus, when such regrind was mixed with a sample of untoasted dry masa, the resulting mixture would fail to exhibit the claimed dimethyl-ethyl-pyrazine concentration. The claimed invention is not directed to merely grinding up corn chips and putting the regrind into a dough. The claimed invention is directed towards making a toasted flavor additive having a concentrated toasted flavor, such that when the additive is added to a dough the resulting mixture exhibits a toasted flavor. For example, paragraph 12 of published application indicates that "the pieces are toasted until significant browning has occurred beyond the level normally associated with consumed masa products." Paragraph 42 teaches that "The TCF preforms 165, however, are toasted to a much greater extent than that to which corn masa performs are normally toasted while forming a consumable corn tortilla chips." Consequently, in light of the above, Applicants respectfully request the Examiner withdraw the rejections.

In response to previous arguments, the Examiner states:

> Applicant's contention, that the claimed concentration is not merely the product of routine experimentation, is a simple conclusion unsupported by any factual evidence of record. There is simply no factual evidence to indicate that said concentration is critical or achieves unexpected results. Applicant's comment with regard to the flavor intensity is not commensurate in scope with any of applicant's claims, which fail to recite a flavor intensity limitation.

Applicants first note that an affidavit signed by Professor Emeritus Dr. Russell Carl Hoseney of Kansas State University was submitted in a filing on April 5, 2005 that indicates that one skilled in the art would not be motivated to combine Ellis with the Salmon Patty reference or the Food Product Design reference. In paragraph 8 of his affidavit, Dr. Hoseney indicates that the toasted corn flavor additive of the Applicant's invention would have a different flavor note than that found in commercial corn chips. This flavor note results because the Applicants teach toasting the pieces until significant browning occurs. Dr. Hoseney also indicates that Ellis in fact teaches away from the present invention "Because Ellis teaches that freshly-baked or toasted masa products are potentially bland and undesirable without at least some additional processing, such as adding oil and seasoning . . . ." Consequently, there is factual evidence that the claimed invention is unobvious in view of the cited art.

Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 706.02(j).

Applicants disagree with the Examiner's conclusory allegation in paragraph 11 of Office Action mailed on April 9, 2007, that "finding the optimum dimethyl-ethyl-pyrazine concentration and the optimum colorimeter L-value would require nothing more than routine experimentation by one reasonably skilled in this art." The Examiner's "findings should clearly articulate which portions of the reference support any rejection. ... Conclusory statements of similarity or motivation, without any articulated rationale or evidentiary support, do not constitute sufficient factual findings." MPEP § 2144.08III. Findings of fact relied upon in making the obviousness rejection must be supported by substantial evidence within the record. *See In re Gartside*, 203 F.3d 1305, 1315 (Fed. Cir. 2000). As the Examiner failed to support his rejection of the claimed dimethyl-ethyl-pyrazine concentration in claims 1 and 5 with an explanation or specific citation to any reference, Examiner is respectfully invited to either withdraw the rejection of claims 1 and 5 or provide a specific citation to a reference disclosing the claimed invention.

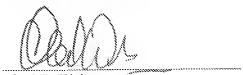
Applicants reiterate that the present amendments should be entered for reducing the issues for appeal in particular by placing the claims in condition for allowance.

CONCLUSION

It is respectfully urged that the subject application is patentable over the references cited by Examiner and is now in condition for allowance. Applicant requests consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Chad E. Walter or Colin Cahoon at 972-367-2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

By: 

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